

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

May 2, 2007

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

REX COAL COMPANY

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Docket No. KENT 2006-473  
A.C. No. 15-13103-93643

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) ("Mine Act"). On December 6, 2006, Chief Administrative Law Judge Robert Lesnick issued to Rex Coal Company ("Rex") an Order to Show Cause for failure to answer the Secretary of Labor's petition for assessment of penalty. On April 2, 2007, Chief Judge Lesnick issued an Order of Default dismissing this civil penalty proceeding for failure to respond to the show cause order.

On April 16, 2007, the Commission received from Rex a motion to set aside the order of default. Rex states that it filed an answer on October 23, 2006. Attached to its motion was a copy of its Answer. The Secretary has indicated that she does not oppose Rex's request.

The judge's jurisdiction in this matter terminated when his decision was issued on April 2, 2007. 29 C.F.R. § 2700.69(b). Relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). We deem Rex's motion to constitute a timely filed petition for review, which we grant. *See, e.g., Middle States Res., Inc.*, 10 FMSHRC 1130 (Sept. 1988).

Rex allegedly submitted an answer in October 2006 to the Secretary's petition for assessment of penalty. However, the Commission apparently did not receive Rex's answer at that time. Accordingly, the judge entered a default judgment against Rex. Based on the present

record, we are unable to determine whether Rex timely submitted its answer, and if so, why it apparently was not received.

Having reviewed Rex's request, in the interest of justice, we remand this matter to the Chief Administrative Law Judge, who shall determine whether relief from default is warranted, and for further proceedings as appropriate.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

## Distribution

H. Kent Hendrickson, Esq.  
Rice Hendrickson & Williams  
P.O. Box 980  
Harlan, KY 40831

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., 22<sup>nd</sup> Floor  
Arlington, VA 22209

Donna E. Sonner, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
618 Church Street, Suite 230  
Nashville, TN 37219-2456

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety and Health Review Commission  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001